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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,513	04/19/2004	Christopher T. Szeto	12729/88 (Y00302US00)	4296

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BRINKS HOFER GILSON & LIONE / YAHOO! OVERTURE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER

ULRICH, NICHOLAS S

ART UNIT	PAPER NUMBER
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2173

MAIL DATE	DELIVERY MODE
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10/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/828,513

Applicant(s)

SZETO, CHRISTOPHER T.

Examiner

Nicholas S. Ulrich

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37 (e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

TADESSE HAILU
PRIMARY EXAMINER

Tadesse Hailu

Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments are not persuasive (see attached "Response to arguments").

Response to Arguments

Applicant's arguments filed 9/21/2007 have been fully considered but they are not persuasive.

In regard to applicant's argument that the Werndorfer reference does not qualify under 35 U.S.C. 102, the examiner disagrees. Applicant feels that the applied reference (Werndorfer) has a priority date of February 12th, 2007 due to the fact that the examiner created the supporting documents on February 12th, 2007. The examiner admits the documents were created on February 12th, 2007, by taking screenshots of the Werndorfer program in use. While the documents used to help necessitate the rejections were created on February 12th, 2007, the rejection is based on the program, Trillian Instant messenger version 0.73, which has a copyright date of 2000-2002 (See Werndorfer reference Fig 3). The documents created by the examiner are supplied only to help show the functionality of the application to the applicant. The examiner has established and proved that the reference was available to the public on June 7th 2002, by showing the copyright information included with the Trillian Instant messenger program (see Werndorfer reference fig 3). For this reason alone, The Trillian Instant Messenger program, created by Scott Werndorfer, qualifies as prior art under 35 U.S.C. 102(b), because it was available to the public more than one year before the filing date of the present invention. Because the Examiner has proved the program was available for use on or before June 7th, 2002, and has shown the functionality of the program, an affidavit to support the rejections is not required. An affidavit would be required if the examiner was relying on "**personal knowledge**".

The copyright date of 2000-2002, provides evidence that no changes have been made to the computer program to this date. Examiner reminds applicant that the rejections are based on Trillian Instant Messenger program version 0.73. Examiner admits that there have been upgrades and changes to the Trillian instant Messenger program over the years, but these changes and upgrades are available in newer versions of the software not relied upon by the examiner. Version 0.73, along with all its functionality, is copyrighted 2000-2002.

Applicant argues that changes to the underlying operating system, computer hardware, and other developments in technology may cause the application to behave differently in 2007 than it would have in 2002. However, version 0.73 of the Trillian Instant Messenger program will operate as programmed with the same functionality, regardless of changes made to the hardware on which the software is running.

In regard to applicants argument that Werndorfer does not show "maintaining a preprogrammed minimum height for the friends list page", the examiner disagrees. It has been established above that the supplied documents are only support documents to help show to the applicant the features present within the Trillian Instant messenger program version 0.73. The examiner shows in figures 5, 6, 7, and 8, the operation of changing the size of the contact window in the Trillian Instant messenger program version 0.73. These screenshots clearly show that the contact window can be resized by dragging the bottom corner of the contact window. The final figure, 8, shows the smallest possible size that the contact window can take without minimizing the entire

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Trillian Instant Messaging software program and therefore shows a preprogrammed minimum height for the friends list page.

Because of the reasons expressed above, the independent claims of the present invention are still unallowable over the prior art, thus the application is not in condition for allowance.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas S. Ulrich whose telephone number is 571-270-1397. The examiner can normally be reached on M-TH 9:00 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on 571-272-4048. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nicholas Ulrich
10/4/2007
2173